

AMNESTY INTERNATIONAL

25 August 2011

Index: MDE 19/031/2011

Libya: Pursuing al-Gaddafi – the legal questions answered

What should happen to Colonel al-Gaddafi upon his capture?

Colonel al-Gaddafi must be given a fair trial. This is essential so that his victims in Libya can see justice being done. Everyone should be brought to justice, irrespective of their rank.

The UN Security Council referred the situation in Libya to the Prosecutor of the International Criminal Court (ICC) in February. After a preliminary investigation, the ICC Prosecutor concluded that there were reasonable grounds to believe that al-Gaddafi, his son Saif al-Islam and military intelligence chief Abdallah al-Sanussi have committed crimes within the jurisdiction of the Court and asked the ICC to issue arrest warrants against them. The three ICC arrest warrants issued on 27 June 2011 should be carried out immediately.

If any of the three are captured, they must be treated humanely and handed over safely and immediately to the ICC to face investigation.

What should al-Gaddafi be investigated for?

The ICC warrants cover two crimes against humanity – murder and persecution – committed since 15 February. A wave of killings and enforced disappearances of suspected critics of the government began in February following the start of anti-Gaddafi protests in Benghazi.

Libyan officials should also be held accountable for serious human rights violations committed before this year's uprising, some of which sparked the public demonstrations. The charges against Colonel al-Gaddafi do not cover the decades when security forces under his control tortured, killed and made people “disappear” with impunity. For example no official has ever been held to account for the deaths of up to 1,200 people in the infamous Abu Slim prison massacre in 1996.

How could human rights abuses committed before 15 February be dealt with?

The new Libyan leadership should swiftly rebuild its justice system to enable national courts to investigate and prosecute crimes under international law. This should also include crimes committed before 15 February, as well as those allegedly committed by persons who will not face investigation at the ICC.

The Libyan authorities may also wish to establish an independent commission of inquiry or a truth commission. Revealing the truth about past crimes and human rights violations would help to ensure victims of those crimes have access to justice and full reparations.

Why can't Colonel al-Gaddafi be tried in Libya?

Once the ICC decides to open an investigation in a case, national courts may not investigate that case and are relieved from their obligation to do so. In addition, since the ICC has issued an arrest warrant against al-Gaddafi, all states – including Libya - are obliged to cooperate fully with the Court.

What are the problems with the Libyan justice system?

Libya's new leadership will need to assess how to reform the judiciary, the police and other key institutions as soon as possible after the fighting has stopped. The following are priorities for urgent reform:

- Libya's Criminal Code fails adequately to define crimes under international law, such as genocide, crimes against humanity, war crimes, torture, enforced disappearances and extrajudicial executions.
- Libya's Code of Criminal procedure lacks adequate legal safeguards, particularly in cases that are deemed to be political in nature.
- The independence of Libya's judiciary has been undermined by persistent political interference over decades.
- Security forces routinely flout the limited safeguards that do exist in Libyan law. A parallel legal system has been set up since 2007 to handle cases "against the state," where international standards are not met.
- The death penalty is prescribed for a wide range of offences.

Should Colonel al-Gaddafi receive the death penalty?

No. Amnesty International categorically opposes the death penalty in all cases, whatever the magnitude of the crime. Capital punishment violates the right to life and is the ultimate cruel, inhuman and degrading punishment.

What if another country offered safe haven to Colonel al-Gaddafi?

International law prohibits granting immunity to anyone suspected of committing the most serious crimes. If al-Gaddafi were to flee Libya, Amnesty International would call for his immediate arrest and transfer to the ICC for investigation.

Wouldn't giving al-Gaddafi immunity have helped save lives by bringing an earlier end to the conflict?

Such deals make a mockery of international law and can never be accepted. They violate the victims' right to justice, truth and reparation. Accountability means nothing if those accused of some of the most serious crimes are given a "get out of jail free" card merely for agreeing to stop committing those crimes.

Experience has shown that a legacy of impunity fuels a continuing cycle of human rights violations and prolonged conflict. Whether in Colombia, the Democratic Republic of Congo, Haiti, Israel/Occupied Palestinian Territories or Iran, leaders have come and gone but perpetrators go unpunished and violations continue on a massive scale. Experiences in Chile, Argentina, Liberia and Sierra Leone show that immunities and amnesties for serious human rights violations have not worked.

Isn't the ICC another example of "Western" intervention in Libyan / African affairs?

No, it is a global institution. More than half the world's countries (116) have ratified the Rome Statute that set up the ICC, including 32 from Africa. Additionally, 23 countries have signed the treaty and are expected to ratify it in future. One of the last countries to do so was Tunisia, which joined the ICC in June 2011. We expect the new government in Libya to ratify without delay the Rome Statute of the ICC.

When the UN Security Council unanimously resolved to refer the situation in Libya to the ICC, not only Western countries but UN Security Council members from all continents supported the move.

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[ICC issues arrest warrant for al-Gaddafi](#) (News, 27 June 2011)